



For a thriving New England

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VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation (“CLF”)¹ hereby gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act (“Clean Water Act,” “CWA,” or “Act”), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., Part 135 (the “Notice”) to the addressed persons of CLF’s intention to file suit in United States District Court of the District of Massachusetts seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

First, P.A. Landers, Inc. and Drinkwater Investment Corporation (hereinafter collectively referred to as “P.A. Landers”) are discharging stormwater directly associated with the asphalt pavement production, ready-mix concrete manufacturing, and construction sand and gravel (exposed aggregate) site located at 351 Winter St., Hanover, MA 02339 (the “Facility”), to the

¹ CLF is a not-for-profit 501(C)(3) organization dedicated to the conservation and protection of New England’s environment. Its mission includes the conservation and protection of the many uses of the waters in and around the Cape Cod watershed for, among other things, fishing, recreation, boating, scenic/aesthetic, and scientific purposes. CLF’s membership includes people who live in or near the Cape Cod watershed, and use and enjoy the watershed for recreational, aesthetic, and/or scientific purposes. The interests of CLF’s members are adversely affected by the Facility’s discharges of stormwater pollution to the receiving waters without a permit and in violation of the Clean Water Act.

waters of the United States without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second, P.A. Landers has failed to obtain coverage under any Clean Water Act permit, including the Multi-Sector General Permit² (“MSGP”) adopted by the United States Environmental Protection Agency (“EPA”) for industrial sources of polluted stormwater runoff, and have failed to comply with the specific requirements of any such permit, in violation of Sections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1). In addition, P.A. Landers has failed to obtain individual National Pollutant Discharge Elimination System (“NPDES”) permit coverage for the Facilities’ process water discharges.

BACKGROUND

Factory Pond is a waterbody within the Cape Cod watershed. P.A. Landers discharges into Factory Pond (Waterbody MA94175). After receiving stormwater discharges from P.A. Landers, Factory Pond flows into the Indian Head River (Waterbody Segments MA94-04 and MA94-22). The Indian Head River flows into the North River (Segments MA94-05 and MA94-06), which thereafter outlets into the Atlantic Ocean. EPA has designated Factory Pond (Waterbody MA94175) and the Indian Head River (Segments MA94-04 and MA94-22) as habitats for “aquatic life harvesting,” “fish, shellfish, and wildlife protection and propagation,” recreation, and aesthetic value.³⁴⁵ EPA has designated the North River (Segments MA94-05 and MA94-06) as a habitat for “shellfish harvesting,” “aquatic life harvesting,” “fish, shellfish, and wildlife

² ENVIRONMENTAL PROTECTION AGENCY, MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP) (June 5, 2015), https://www.epa.gov/sites/production/files/2015-10/documents/msgp2015_finalpermit.pdf [hereinafter MSGP].

³ See U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR FACTORY POND (Waterbody MA94175) (2014), https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA94175&p_list_id=MA94175&p_cycle=2014.

⁴ See U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR INDIAN HEAD RIVER (SEGMENT MA94-04) (2014), https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA94-04&p_list_id=MA94-04&p_cycle=2014.

⁵ See U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR INDIAN HEAD RIVER (SEGMENT MA94-22) (2014), https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA94-22&p_list_id=MA94-22&p_cycle=2014.

protection and propagation,” recreation, and aesthetic value.⁶⁷ The use of Factory Pond, Indian Head River, and North River for other purposes remains unassessed at this time.

EPA has designated Factory Pond (Waterbody MA94175) and the Indian Head River (Segment MA94-22) as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for failure to meet minimum water quality standards.⁸ Waterbody MA94175 and Segment MA94-22 are impaired for mercury in fish tissue. Stormwater is a probable source of impairments in Waterbody MA94175 and Segment MA94-22.⁹¹⁰

EPA has designated the Indian Head River (Segment MA94-04) as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for failure to meet minimum water quality standards.¹¹ Segment MA94-04 is impaired oxygen enrichment/oxygen depletion (dissolved oxygen), mercury in fish tissue, and nutrients (phosphorus). Stormwater is a probable source of impairments in Segment MA94-04. Stormwater is a probable source of impairments in Segment MA94-04.¹²

Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt.¹³ Industrial activities, such as material handling and storage, equipment maintenance and cleaning, industrial processing, and other operations that occur at industrial facilities, may be exposed to stormwater.¹⁴ Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.¹⁵

P.A. Landers is required to apply for coverage under a Clean Water Act discharge permit—such as the MSGP—in order to discharge lawfully. Since at least 2010, P.A. Landers has been specifically required to apply for coverage under the MSGP by filing a Notice of Intent (“NOI”) within 90 days after the initial issuance of the MSGP.¹⁶ On June 16, 2015, after expiration of the

⁶ See U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR NORTH RIVER (MA94-05) (2014), https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA94-05&p_list_id=MA94-05&p_cycle=2014.

⁷ See U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR NORTH RIVER (MA94-06) (2014), https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA94-06&p_list_id=MA94-06&p_cycle=2014.

⁸ See 33 U.S.C. § 1313(d).

⁹ See U.S. ENVTL. PROTECTION AGENCY, *supra* note 3.

¹⁰ See U.S. ENVTL. PROTECTION AGENCY, *supra* note 5.

¹¹ See 33 U.S.C. § 1313(d).

¹² See U.S. ENVTL. PROTECTION AGENCY, *supra* note 4.

¹³ See 40 C.F.R. § 122.26(b)(13).

¹⁴ See 40 C.F.R. § 122.26(b)(14).

¹⁵ See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

¹⁶ EPA’s Final National Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) was first issued in 1995 and later

prior permit, the EPA issued a new MSGP requiring all covered facilities to file an NOI for coverage under the 2015 permit.

P.A. Landers has failed to obtain coverage under the current MSGP or any other valid discharge permit at any time. Therefore, P.A. Landers is operating in violation of the Clean Water Act.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

P.A. Landers, Inc. and Drinkwater Investment Corporation are the persons, as defined by 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. P.A. Landers has operated the Facility since at 1978, currently advertises as the operator of the Facility, and is registered with the Massachusetts Secretary of the Commonwealth.¹⁷ Drinkwater Investment Corporation owns the land parcel on which the Facility operates and has been registered with the Massachusetts Secretary of the Commonwealth since 1983.¹⁸ P.A. Landers, Drinkwater Investment Corporation, and their shared agents and directors—including but not limited to David R. Prosper, President—have ownership and operational control over the day-to-day industrial activities at this Facility. Therefore, they are responsible for managing stormwater at the Facility in compliance with the Clean Water Act.

LOCATION OF THE ALLEGED VIOLATION

The violations alleged in this Notice have occurred and continue to occur at the asphalt pavement production, ready-mix concrete manufacturing, and construction sand and gravel (exposed aggregate) Facility located at 351 Winter St., Hanover, MA 02339.

ACTIVITIES ALLEGED TO BE VIOLATIONS

P.A. Landers has engaged, and continues to engage in “industrial activities” and its operations fall under SIC codes 2951, 3273, and 1442, within the meaning of 40 C.F.R. § 122.26(b)(14).¹⁹

reissued in 2000, 2008, and 2015. *See generally* 60 Fed. Reg. 50,804 (Sept. 29, 1995); 65 Fed. Reg. 64,746 (Oct. 30, 2000); 73 Fed. Reg. 56,572 (Sept. 29, 2008); 80 Fed. Reg. 34,403 (June 16, 2015); *see also* MSGP, *supra* note 2, pts.1.1–1.2.

¹⁷ *See* SEC’Y OF THE COMMONWEALTH OF MASS.: CORPS. DIV. BUS. ENTITY SUMMARY: P.A. LANDERS, INC., http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=042660795&SEARCH_TYPE=1 (last visited January 26, 2017).

¹⁸ *See* SEC’Y OF THE COMMONWEALTH OF MASS.: CORPS. DIV. BUS. ENTITY SUMMARY: DRINKWATER INVESTMENT CORPORATION, http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=042790279&SEARCH_TYPE=1 (last visited January 26, 2017).

¹⁹ *See* MSGP, *supra* note 2, at appen. D. Asphalt production facilities identified by the SIC code 2951, ready-mix concrete manufacturing facilities identified by the SIC code 3273, and construction sand and

Because the Facility has primary SIC codes of 2951, 3273, and 1442 and discharges stormwater associated with industrial activity, P.A. Landers is required to apply for coverage, obtain coverage, and comply with the requirements of a NPDES permit such as the MSGP. P.A. Landers has failed to take any of these required steps.

Activities at the Facility include, but are not limited to: storing, moving, and processing asphalt, sand, gravel (exposed aggregate), and other materials outside or otherwise exposing them to the elements; manufacturing, storing, and moving ready-mix concrete; operating and storing heavy machinery and equipment outdoors; and driving vehicles on and off the Facility thereby tracking pollutants off-site. All of these activities at the Facility have contaminated the site with industrial pollutants.

Asphalt, concrete, sand, gravel (exposed aggregate), and other materials; machinery and equipment; and vehicles at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over the sand and gravel piles; machinery and equipment; and vehicles, picking up dust, total suspended solids (TSS), total dissolved solids (TDS), fines, diesel/gas fuel, oil, heavy metals, trash, and other pollutants associated with the Facility's operations. The polluted runoff is then conveyed off-site into waters of the United States.

In addition, to the extent that P.A. Landers use water in its industrial processes, including but not limited to spraying water on industrial machinery and washing sand, rock, gravel, and any other materials involved in asphalt pavement, ready-mix concrete, and construction sand and gravel production, that water becomes "process wastewater" (also referred to as "process water") as defined in 40 C.F.R. § 122.2.²⁰ Discharges of process wastewater are not covered under the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity. Rather, discharges of process wastewater must be covered under an individual NPDES permit. CLF intends to pursue claims related to P.A. Landers' unpermitted discharges of process water to waters of the United States.

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED

The Clean Water Act prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.²¹ P.A. Landers discharges stormwater associated with its industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), from its Facility into waters of the United States. Because P.A. Landers has not obtained coverage for these

gravel facilities identified by the SIC code 1442 are subject to the requirements of the MSGP for stormwater discharges.

²⁰ Defining "Process wastewater" as "any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product."

²¹ 33 U.S.C. § 1311(a).

stormwater discharges under the MSGP or an individual NPDES permit, it is illegally discharging stormwater without a permit, in violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).²² By failing to apply for and comply with the specific requirements of the MSGP, P.A. Landers is in violation of Sections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1). In addition, unpermitted discharges of process wastewater constitute violations of 33 U.S.C. § 1311(a). Therefore, CLF puts P.A. Landers on notice that CLF intends to pursue claims related to P.A. Landers' unpermitted discharges of process wastewater to waters of the United States.

a. P.A. Landers is discharging stormwater to waters of the United States without a permit.

P.A. Landers is an industrial discharger with primary SIC Codes of 2951, 3273, and 1442 which means that pursuant to Section 402(p) of the Act, P.A. Landers is obligated to apply for coverage under the MSGP or obtain other legal authorization. Because P.A. Landers has operated and continue to operate without a permit under Section 402(p), P.A. Landers is in violation of Section 301(a) of the Act.

In addition, during storm events, P.A. Landers' "industrial activities" at the Facility have resulted in a "discharge of pollutants" within the meaning of 33 U.S.C. § 1362(12) and "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14), from its Facility on each and every day that there has been a measurable precipitation event of above 0.1 inches.²³ There have been many such storm events since 1978. The Facility is generating pollutants from and through at least the following point sources: the piles of sand, gravel, and any other materials involved in asphalt pavement and construction sand and gravel production that are open to the elements; the machines and equipment left outdoors, and the vehicles driving on and off the Facility, while additionally conveying pollutants through site grading, surface water channels, subsurface hydrological connections, detention ponds, culverts, and other conveyances to Factory Pond.²⁴ Factory Pond flows into the Indian Head River, and

²² See 33 U.S.C. § 1362(12); 40 C.F.R. § 122.2; see also MSGP, *supra* note 2, at appen. A (defining the term "discharge of a pollutant" as, *inter alia*, "any addition of any 'pollutant' or combination of pollutants to 'waters of the United States' from any 'point source'").

²³ See 40 C.F.R. § 122.26(c)(i)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.

²⁴ These discharges constitute "point sources" as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2. Thus, CLF specifically puts P.A. Landers, Inc. and Drinkwater Investment Corporation on notice that the unpermitted stormwater discharges associated with industrial activity include discharges from the Facility areas specified in 40 C.F.R. § 122.26(b)(14). See also 40 C.F.R. § 122.2 (stating that the definition of "discharge of a pollutant" "includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man[.]").

thereafter into the North River and the Atlantic Ocean. All of the aforementioned waterbodies are “waters of the United States,” as defined in 40 C.F.R. § 122.2, and therefore, “navigable waters,” as defined in 33 U.S.C. § 1362(7). The Facility is discharging this industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

b. P.A. Landers is discharging process water to waters of the United States without a permit.

Wastewater associated with industrial processes, including, but not limited to, washing materials and paved surfaces and spraying machinery, is classified as “process wastewater” under the federal Clean Water Act and as defined in 40 C.F.R. § 122.2. Wastewater produced by washing materials and paved surfaces and spraying machinery can contain a variety of pollutants, including detergents, oil, grease, heavy metals, and other pollutants associated with the Facility’s operations. In addition, solids suspended or dissolved in washwater can pollute ground and surface waters. Process wastewater can have severe and long-term impacts on aquatic environments.

Discharges of process water that result from washing materials and paved surfaces and spraying machinery are not covered under the MSGP. Discharges of process wastewater must instead be covered under an individual NPDES permit. P.A. Landers does not have an individual NPDES permit authorizing the discharge of process water to waters of the United States. CLF intends to pursue claims related to P.A. Landers’ unpermitted discharges of process water to waters of the United States, namely Factory Pond.

c. P.A. Landers is violating the Clean Water Act by failing to obtain coverage and failing to comply with the requirements of the MSGP.

P.A. Landers is violating 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1), by failing to apply for, obtain coverage, and comply with the requirements of the MSGP.²⁵ The Facility has primary SIC Codes of 2951, 3273, 1442 and must obtain coverage under the MSGP for its stormwater discharges and for stormwater discharges from any co-located industrial activities.²⁶ P.A. Landers’ failure to obtain coverage and comply with the permit is in violation of the MSGP and Section 402, 33 U.S.C. § 1342(p) of the Clean Water Act.²⁷

²⁵ See MSGP, *supra* note 2, pts.1.1–1.2.

²⁶ *Id.* at pts. 1.1, 8.D, 8.E, 8.J.

²⁷ A thorough search of EPA’s databases indicates that neither P.A. Landers, Inc. nor Drinkwater Investment Corp. has filed an NOI for this Facility for the 2015 MSGP. See U.S. ENVTL. PROTECTION AGENCY, ENFORCEMENT AND COMPLIANCE HISTORY ONLINE, <https://echo.epa.gov/> (last visited January 26, 2017).

1) P.A. Landers Must Develop and Implement Stormwater Pollution Prevention Plans (SWPPP).

As a prerequisite to applying for coverage under the MSGP, P.A. Landers must develop and implement a Stormwater Pollution Prevention Plan (“SWPPP”).²⁸ The SWPPP must include, but is not limited to, the following: information related to a company stormwater pollution prevention team, a site description, a summary of pollutant sources, a description of control measures, and schedules and procedures pertaining to control measures and monitoring.²⁹ P.A. Landers has failed to develop and implement a SWPPP in accordance with the MSGP requirements in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

2) P.A. Landers Must Submit to EPA a Complete Notice of Intent to be Covered under the MSGP.

To be eligible to discharge under the MSGP, P.A. Landers must submit a complete Notice of Intent (“NOI”) to the EPA.³⁰ To complete the NOI, P.A. Landers is required to determine whether the body of water to which the stormwater discharges is an “impaired” water body, and whether the Facility discharges any specific pollutants listed on the NOI to that water body.³¹ Factory Pond (Waterbody MA94175) is classified as an “impaired” water.³² Additionally, as part of preparing the NOI, the covered Facility must make certain verifications such as ensuring that no harm is done to a species in violation of the Endangered Species Act.³³ P.A. Landers has failed to prepare and file an NOI meeting all applicable requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

3) P.A. Landers Must Take Control Measures and Meet Water-Quality Effluent Limitations.

To be eligible to discharge under the MSGP, P.A. Landers must select, design, install, and implement control measures (including best management practices) to prevent polluted stormwater discharges from reaching nearby waterbodies. P.A. Landers must address the selection and design considerations in the permit, meet the non-numeric effluent limitations in the permit, and meet limits contained in applicable permit effluent limitations guidelines.³⁴ These control practices must be in accordance with good engineering practices and manufacturer’s

²⁸ See MSGP, *supra* note 2, at pt. 5.

²⁹ *Id.* at pt. 5.2.

³⁰ *Id.* at pt. 1.2.

³¹ *Id.* at pt. 2.2.2.

³² See *supra* note 3.

³³ See MSGP, *supra* note 2, pts. 1.1.4.5, 2.3.

³⁴ See MSGP, *supra* note 2, pt. 2.1.

specifications.³⁵ If the control measures are not achieving their intended effect of minimizing pollutant discharges, the permittee must modify these control measures as expeditiously as practicable.³⁶ P.A. Landers has failed to cover the materials and operations that may result in polluted stormwater runoff. P.A. Landers has not implemented the required control measures in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

4) P.A. Landers Must Conduct Routine Facility Inspections.

To be eligible to discharge under the MSGP, P.A. Landers must conduct routine inspections of all areas of the Facility where industrial materials or activities are exposed to precipitation, and must ensure that all stormwater control measures comply with the effluent limits contained in the MSGP.³⁷ Routine inspections must be conducted at least quarterly but in many instances monthly inspections are most appropriate.³⁸ These inspections must occur when the Facility is in operation.³⁹ The schedule of these inspections must be included in the Facility's SWPPP and be performed by qualified personnel.⁴⁰ P.A. Landers has failed to conduct the required routine inspections in accordance with the MSGP requirements in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

5) P.A. Landers Must Comply with the Required Monitoring and Sampling Procedures.

To be eligible to discharge under the MSGP, P.A. Landers must collect and analyze stormwater samples and document monitoring activities consistent with the procedures in the MSGP.⁴¹ The MSGP requires five types of analytical monitoring (one or more of which may apply) including quarterly benchmark monitoring, annual effluent limitations guidelines monitoring, State or Tribal-specific monitoring, impaired waters monitoring, and other monitoring as required by the EPA.⁴² An operator must monitor each outfall identified in the SWPPP covered by a numeric effluent limit.⁴³ Required monitoring must be performed after stormwater events that result in an actual discharge on a required schedule.⁴⁴ All monitoring data collected under the Permit must be reported to EPA. Furthermore, because Factory Pond is an "impaired water" under Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), P.A. Landers must monitor for all

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at pt. 3.1.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at pt. 6.

⁴² *Id.* at pt. 6.2.

⁴³ *Id.* at pt. 6.1.1.

⁴⁴ *See* MSGP, *supra* note 2, pt. 6.1.3.

pollutants for which Factory Pond is impaired.⁴⁵ P.A. Landers has failed to conduct the required monitoring under the MSGP and has failed to submit the required monitoring reports to EPA in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

6) P.A. Landers Must Carry Out the Required Reporting and Recordkeeping.

P.A. Landers must maintain and submit any and all required monitoring data.⁴⁶ Such monitoring data includes the following: an annual report to EPA which includes the Facility's findings from the annual comprehensive site inspection and any documentation of corrective actions;⁴⁷ an Exceedance Report to the EPA if any of the follow-up monitoring shows any exceedances of a numeric effluent limit;⁴⁸ and any other required reports under the MSGP.⁴⁹ P.A. Landers has failed to maintain the required records and failed to submit all required monitoring data under the MSGP in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

7) P.A. Landers Must Comply with the Requirements of MSGP Subparts 8.D, 8.E, and 8.J

P.A. Landers must also comply with the sector-specific requirements contained in Subparts 8.D, 8.E, and 8.J of the MSGP.⁵⁰ Subpart 8.D requires asphalt pavement production facilities to implement additional technology-based effluent limits⁵¹ and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to asphalt pavement production facilities.⁵² Subpart E requires glass, clay, cement, concrete, and gypsum product facilities to implement additional technology-based effluent limits,⁵³ meet additional SWPPP and inspection requirements,⁵⁴ and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to glass, clay, cement, concrete, and gypsum product facilities.⁵⁵ Subpart 8.J requires construction sand and gravel facilities to implement additional technology-based effluent limits,⁵⁶ meet additional SWPPP and inspection requirements,⁵⁷ and monitor stormwater discharges for compliance with the benchmark

⁴⁵ *Id.* at pt. 6.2.4

⁴⁶ *Id.* at pt. 7.1

⁴⁷ *Id.* at pt. 7.5.

⁴⁸ *Id.* at pt. 7.6.

⁴⁹ *Id.* at pt. 7.7.

⁵⁰ *Id.* at appen. D, Table D-1, Sector D, pt. 8.D; Sector E, pt. 8.E; Sector J; pt. 8.J.

⁵¹ *Id.* at pt. 8.D.4.

⁵² *Id.* at pt. 8.D.3.

⁵³ *Id.* at pt. 8.E.2.

⁵⁴ *Id.* at pt. 8.E.3.

⁵⁵ *Id.* at pts. 8.E.4–8.E.5.

⁵⁶ *Id.* at pts. 8.J.4–8.J.5.

⁵⁷ *Id.* at pts. 8.J.6–8.J.7.

limitations applicable specifically to construction sand and gravel facilities.⁵⁸ P.A. Landers must also minimize contact of stormwater runoff with sand, gravel, stockpiled materials, processed materials and non-recyclable wastes through various control measures such as permanent or semi-permanent covers or roofs, interceptor or diversion controls (e.g., dikes, swales, curbs, or berms); pipe slope drains; subsurface drains; conveyance systems (e.g., channels or gutters, open-top box culverts, and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts); or their equivalents.⁵⁹ P.A. Landers has failed to comply with the requirements of Subparts D, E, and J of the MSGP in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

DATES OF VIOLATION

Each day on which P.A. Landers, Inc. and Drinkwater Investment Corporation operate the Facility without permit coverage or discharge stormwater and/or process water from the Facility without permits is a separate and distinct violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

P.A. Landers has discharged stormwater without permits in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), on every day since at least 2010 on which there has been a measurable precipitation event. Each day on which P.A. Landers operates the Facility without permit coverage or discharges process water without a permit from the Facility is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

Every day, since at least 2010, on which P.A. Landers has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of the MSGP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A).

These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

RELIEF REQUESTED

P.A. Landers, Inc. and Drinkwater Investment Corporation are liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects P.A. Landers to a penalty up to \$37,500 per day per violation for all violations occurring from January 12, 2009 through November 2, 2015, and \$51,570 for penalties that are assessed on

⁵⁸ *Id.* at pt. 8.J.8.

⁵⁹ *Id.* at pt. 8.J.5.2.

or after August 1, 2016, for violations that occurred after November 2, 2015.⁶⁰ CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring P.A. Landers to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with this matter.

CONCLUSION

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Zachary Griefen within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,



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⁶⁰ See 33 U.S.C. §§ 1319(d), 1365(a); 40 C.F.R. §§ 19.1–19.4.



cc:

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